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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,241	06/15/2006	Jerry R. Awbrey	IDI-8-PCT-US	8251

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EXAMINER
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HAGEDORN, MICHAEL E

ART UNIT	PAPER NUMBER
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3754

MAIL DATE	DELIVERY MODE
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02/03/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/583,241	<b>Applicant(s)</b> AWBREY ET AL.	
	<b>Examiner</b> Michael Hagedorn	<b>Art Unit</b> 3754	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 January 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 21 - 40 is/are pending in the application.
- 4a) Of the above claim(s) 33 - 40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21 - 32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>29 September 2006</u> .                                       | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 33 – 40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on January 8<sup>th</sup>, 2009.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 21 - 32 are rejected on the ground of nonstatutory double patenting over claims 1, 8, 10 - 27, 30 - 39 of U. S. Patent No. 7,261,221 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

The claims presented in the current application contain identical or nearly identical language as in US Patent 7,261,221. For example, claim 15 of US Patent 7,261,221 reads "a hook integral to said removable hooking device, said hook extending from said hooking device in a side thereof opposite such surface when said hooking device is attached to such surface. A deformable container for containing said fluid, said container having an upper portion defining a through-hole therethrough and said lower portion forming a container mouth through which said fluid is flowable" which is identical to the claim language found in claim 21 of the pending application. Additionally, there are many other claims found in US Patent 7,261,221 that conflict with pending claims in the present application that are not discussed here.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 21 – 25, 27, 28, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waskönig et al. (US Patent 3,078,017) in view of Viegas (5,307,955).

In re claim 21 – 25, 27, 28, 30 and 31 Waskönig et al. teaches an inverted dispensing system including a removable hooking device (6 – 8) that is a suction cup attachable to a surface, a hook (8), a deformable container (1) a through-hole (3, or within 4), a cap (5) a skirt (6). Wherein said container (1) rests against such surface to form a first contact area (see figure 2) and a second contact area is formed between said container (1) and said hooking device (6 – 8) and wherein said first contact area minimizes a folding of said container (1) when pressure is applied. The container (1) also rests against the surface in a shower to form multiple contact areas thereat.

Waskönig fails to teach cap defining an aperture and/or dispensing valve that is operably alignable with said mouth of said container, said dispensing valve controlling the flow of the fluid; and wherein said container is a bag. Viegas does teach a cap (31) defining an aperture and/or dispensing valve (50) that is operably alignable with said

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mouth (30) of said container (10) for controlling the flow the of the fluid; and wherein said container is a bag (10).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have a cap as taught by Viegas defining an aperture alignable with the mouth of the container because this would prevent unwanted leakage when not in use.

7. Claims 26 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waskönig et al. (US Patent 3,078,017) in view of Viegas (5,307,955) as applied to claim 21 above in further view of Judy (3,078,016).

In re claim 26, Waskönig and Viegas teach a disposable dispensing system as applied to the claims above but do not teach an indicator that shows where force should be applied to dispense said fluid from said container and wherein said container has a front side that faces away from the surface of the shower and a backside that faces toward the shower surface and wherein said back said is more planar than said front side. Judy teaches to provide an indicator that shows where force should be applied to dispense said fluid from said container (14) and a front side (26) that faces away from the shower, a backside that faces toward the shower (24) and wherein said back side the more planar than said front side.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to implement Judy's teaching into Waskönig's in view of Viegas because this would instruct the user on how operate the device and having the back side more planar than the front side would create an easy way to mount the device.

8. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waskönig et al. (US Patent 3,078,017) in view of Viegas (5,307,955) as applied to claim 21 above, in further view of Howard (US Patent 6,308,923).

In re claim 29, the claim limitations are disclosed by Waskonig – Viegas above, but doesn't disclose wherein said suction cup device comprises a lever acting suction cup with lever formed by said hook. However, Howard does disclose a suction cup device comprising a lever (16) acting suction cup with lever formed by said hook.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include a lever on the suction cup that is the hook because this would allow the user to easily attach and detach the suction cup that holds the device.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents (4,749,104); (5,673,884); (6,808,090); (4,085,867); (5,749,497); (5,499,748);

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Hagedorn whose telephone number is (571)270-5705. The examiner can normally be reached on 7am - 5pm; Mon thru Fri except federal holidays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)270-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. H./  
Examiner, Art Unit 3754

/Kevin P. Shaver/  
Supervisory Patent Examiner, Art Unit 3754